To Replace Exhibit D In Appendix D Of The May 26, 2006 Response

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INDENTURE

INDENTURE, dated December 31, 1965, between THOMPSON CHEMICAL COMPANY, a Rhode Island corporation (the Subsidiary), and CONTINENTAL OIL COMPANY, a Delaware corporation (the Parent).

WHEREAS, it is intended that the Subsidiary be duly dissolved pursuant to a Plan of Liquidation, dated December 1, 1965, which provides for the distribution of all of its assets to the Parent as the holder of all the Subsidiary's capital stock and the assumption by the Parent of all obligations of the Subsidiary; and

WHEREAS, by this Indenture, the Subsidiary intends to assign, transfer and convey to the Parent all of its property, rights, contracts, business as a going concern and assets which are not assigned, transferred or conveyed to the Parent by other instruments;

NOW, THEREFORE, as a distribution in complete liquidation of the Subsidiary, and in complete cancellation and redemption of all of its stock, the Subsidiary hereby assigns, transfers, and conveys to the Parent all of the Subsidiary's right, title and interest, legal or equitable, in and to all of the property, rights, contracts, business as a going concern and assets, of any nature, tangible and intangible, wherever situate, which the Subsidiary possessed, held or owned at the time of delivery of this Indenture, including, without limitation, the trade connections and lists of customers of the

[redacted] patents, know-how, copyrights and all trademarks, trade names and registrations thereof, including the good will of the business associated therewith, and the exclusive right to use the name "Thompson Chemical Company" or any similar name or names and all other corporate names and trade names to the full extent owned or controlled by the Subsidiary;

TO HAVE AND TO HOLD the property, rights, [redacted] business and assets hereby assigned, transferred and [redacted] to the Parent forever.

SECTION 1. The Subsidiary hereby agrees [redacted] upon the acquisition thereof, it will assign, transfer, and convey to the Parent any property, rights, or assets acquired by the Subsidiary subsequent to the date of this Indenture or accrued or received in respect of the property transferred hereunder.

SECTION 2. The Subsidiary hereby constitutes and [redacted] the Parent its attorney, with full power of substitution, in the name of the Subsidiary, but for the benefit of the Parent, to demand and receive any and all of the property transferred hereunder, and to bring proceedings of any kind with respect to such property and any claim or right of any kind hereby assigned, transferred and conveyed, the Subsidiary hereby declaring that the foregoing powers are coupled with an interest and shall be irrevocable.

SECTION 3. The Parent hereby assumes all the debts, liabilities, contracts and commitments, absolute or contingent, of the Subsidiary, existing at the date hereof.

[redacted] 4. As used herein, the word "Parent" shall be [redacted] include the successors and assigns of the Parent.

IN WITNESS WHEREOF, the parties hereto have duly executed this Indenture as of the close of business on the day and year first above written.

THOMPSON CHEMICAL COMPANY

By _____
President

Attest:

_____
Secretary

(Seal)

CONTINENTAL OIL COMPANY

By _____
Vice President

Attest:

_____
Assistant Secretary

(Seal)

[redacted]

EXHIBIT A

STATE OF RHODE ISLAND

PROVIDENCE, SC. SUPERIOR COURT

CONTINENTAL OIL COMPANY)
)
-vs-) Equity No. 32386
)
THOMPSON CHEMICAL COMPANY)

FINAL DECREE

This cause came on to be heard upon the petition to dissolve the respondent corporation and upon the answer of the respondent thereto, and it appearing that by unanimous vote of all of the stock of the respondent corporation issued and outstanding, the stockholders have determined to dissolve said respondent corporation; that all debts and obligations thereof have been discharged or provided for; that all taxes to the State of Rhode Island have been paid or provided for and that notice has been given pursuant to the order of notice herein, dated December 7, 1965, it is

ORDERED, ADJUDGED and DECREED:

That the respondent corporation, Thompson Chemical Company, existing under the laws of the State of Rhode Island, be and the same hereby is dissolved.

Entered as an order of the Court this 31st day of December, 1965.

By order,

ENTER:
Mackenzie, J.
12/31/65

Joseph Q. Calista
Ass't. Clerk

CLERK

Exhibit E

EXHIBIT B

APEX TIRE & RUBBER CO.

Minutes of the Special Meeting of the

Board of Directors Held on November 17, 1964

A special meeting of the Board of Directors of Apex Tire & Rubber Co., a Rhode Island corporation, was held on November 17, 1964 in the Board Room of Continental Oil Company at 30 Rockefeller Plaza, New York, New York, at 2:00 P. M. pursuant to the foregoing waiver of notice signed by all of the Directors of the Corporation.

The following Directors were present: Messrs. A. W. Tarkington, V. J. Baxt, H. W. Blauvelt, G. A. Cain, M. E. Fain, N. M. Fain, R. C. Hackley, J. D. Morrow and M. L. Sharrah, constituting a majority of the Board and a quorum. Mr. A. W. Tarkington, Chairman of the Board of Directors, presided and Daniel Jacobs, Secretary of the Corporation, acted as Secretary of the meeting.

The Chairman directed that the Waiver of Notice signed by all of the Directors of the Corporation be filed with the minutes of the meeting.

The Chairman called upon Mr. Norman M. Fain for a financial and operating review for the month of October, 1964. Mr. Fain reported and submitted schedules with regard thereto to all of the Directors.

Mr. Fain then submitted the capital budget for 1965, including the expenditure of approximately $100,000.00 for office expansion at the corporation plant in Pawtucket, Rhode Island, and a general fund of $750,000.00 for various projects by this corporation, Thompson Chemical Company and Monroe Manufacturing Company. The Chairman stated the budget was accepted as presented without action by the Board of Directors.

The Chairman stated that Management, pursuant to discussions with representatives of Continental Oil Company, the sole stockholder of the Company, recommended that the Company be dissolved on or before December 31, 1964 and that its assets be distributed to Continental, in complete liquidation of the Company and in complete cancellation and redemption of all of its stock. He stated that in connection with the dissolution, Continental would assume all obligations of the Company and, retaining the Company's assets, would operate the business of the Company, either directly or through a subsidiary or division of Continental.

The Chairman then submitted to the meeting a copy of a proposed Plan of Liquidation of the Company dated November 17, 1964. Thereupon, on motion duly made and seconded and after discussion, the following resolution was unanimously adopted:

RESOLVED,

(1) that the Plan of Liquidation of the Company dated November 17, 1964, a copy of which has been submitted to this meeting, is hereby approved, and

the Secretary is hereby directed to file a copy of said Plan with the records of this meeting;

(2) that the Company be dissolved and that its assets be distributed to Continental Oil Company, as the sole stockholder thereof, in complete cancellation and redemption of all of the capital stock of the Company;

(3) that the proper officers of the Company are hereby authorized, on behalf of the Company, to execute, deliver and/or file all such other instruments and to take all such other action, as they may deem necessary or advisable in connection with said dissolution and in order to carry out said Plan of Liquidation, including, without limiting the generality of the foregoing, authorizing counsel to appear for and on behalf of the Company in connection with the petition to be filed by or on behalf of Continental Oil Company for the dissolution of the Company, and authorizing said counsel to waive issuance and service of any subpoena in connection with said petition and to join therein, and the execution and delivery of an instrument or instruments between the Company and Continental Oil Company, providing for the transfer to Continental Oil Company of all assets of the Company, and for the assumption by Continental Oil Company of all obligations of the Company.

The Chairman called upon Mr. Gordon Cain for a discussion of the proposed retirement program for both wage and salaried employees. After discussion, it was decided that no action would be taken on this matter at this meeting.

Mr. Norman M. Fain proposed that all salaried employees receive an across the board increase of five (5%) per cent plus a sum equal to the contribution by the company to a retirement program. He also proposed that hourly employees receive five (5%) per cent increases which will include payments by the company to a

retirement program and any other payments made by the company. He also proposed that all employees who are called and serve as jurors or on National Guard duty be paid the difference between their usual compensation and the payment received for jury service or National Guard duty. Mr. Fain estimated the total cost to this Company, Monroe Manufacturing Company and Thompson Chemical Company of the programs he proposed, to be $246,000.00.

On motion duly made, seconded and carried, it was

VOTED: That the report of Mr. Norman M. Fain be accepted and that the wage and salary increases he proposed be and the same are hereby authorized.

Mr. Fain further reported that the Salary Review Committee would meet after the conclusion of this meeting to consider increases to those employees within the jurisdiction of this committee.

There being no further business, on motion duly made, seconded and carried, the meeting was adjourned.

ADJOURNED.

Attest:

Secretary

APEX TIRE & RUBBER CO.

PLAN OF LIQUIDATION

WHEREAS, Continental Oil Company, a Delaware corporation (hereinafter referred to as Continental), is the holder of all outstanding stock of Apex Tire & Rubber Co., a Rhode Island corporation (hereinafter referred to as Apex); and

WHEREAS, it is contemplated that a petition to dissolve Apex signed by such stockholder will be filed with the Superior Court for the County of Providence in the State of Rhode Island pursuant to Section 7-5-17 of the General Laws of Rhode Island, 1956, as amended;

NOW, THEREFORE, this Plan provides that:

1. Apex is to effect its complete liquidation and dissolution in accordance with the applicable provisions of the Rhode Island General Corporation Law and all of its assets are to be distributed to Continental, as holder of all outstanding stock of Apex, in complete liquidation of Apex and in complete cancellation and redemption of all of its stock. Upon such liquidation, Continental, as the sole stockholder of Apex, will assume all obligations of Apex.

2. The foregoing steps are to be completed on or before December 31, 1964.

Dated: November 17, 1964

Exhibit C

EXHIBIT C

IN THE MATTER OF

CONTINENTAL OIL COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-1270. Complaint, Nov. 21, 1967—Decision, Nov. 21, 1967

Consent order requiring two corporations with headquarters in New York City to terminate a joint venture in the manufacture and sale of vinyl chloride monomer (VCM) and requiring Continental to sell two acquired affiliated producers of polyvinyl chloride resins (PVC).

COMPLAINT

The Federal Trade Commission, having reason to believe that Continental Oil Company and Stauffer Chemical Company have violated the provisions of Section 7 of the Clayton Act and Section 5(a) (1) of the Federal Trade Commission Act, 15 U.S.C. § § 18 and 45(a)(1), and that a proceeding in respect thereof would be to the interest of the public, issues this complaint stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions are applicable:

(a) Vinyl chloride monomer—a chemical identity, $CH_2=CHCl$, also called monochloroethylene;

(b) Polyvinyl chloride resin—polyvinyl chloride homopolymers and polyvinyl chloride copolymers:

(1) Polyvinyl chloride homopolymer—a resin produced by the polymerization of vinyl chloride monomer;

(2) Polyvinyl chloride copolymer—a resin which by weight contains 50 percent or more vinyl chloride monomer copolymerized with other comonomers such as vinyl acetate or vinylidene chloride:

(c) Polyvinyl chloride compound—polyvinyl chloride resin mixed physically, usually under heat and pressure, with plasticizers, fillers, stabilizers, pigments or other additives.

II. THE RESPONDENTS

A. Continental Oil Company

2. Respondent Continental Oil Company ("Continental") is a corporation organized and existing under the laws of the State of Delaware, with its principal office and principal place of business at 30 Rockefeller Plaza, New York, New York 10020.

3. Continental, in 1965, was the 37th largest industrial corporation in the United States in terms of sales and the 28th

largest in terms of assets. Continental's total sales in 1965, excluding excise taxes, were almost $1.5 billion; its assets, as of December 31, 1965, were more than $1.6 billion; and its retained earnings exceeded $660 million.

4. Continental, together with its consolidated subsidiaries, is a fully integrated oil company which distributes petroleum products in almost every State of the United States. Its operations include exploration for and production of crude oil and natural gas; the refining, transporting and marketing of petroleum; and the manufacture and marketing of petrochemical chemical products.

5. In December, 1964, Continental acquired the assets of Carlon Products Corporation, previously a 53.8 percent owned subsidiary, which manufactures plastic pipe and fittings from various materials including polyvinyl chloride resins and compounds.

6. Continental produces in its own plants and through affiliates a variety of chemical and plastics products, most of which are petroleum based. Sales of chemicals, carbon blacks and plastics were $132 million in 1965.

7. Continental is and for many years has been extensively engaged in the purchase, sale and shipment across State lines of petroleum, chemicals and other products. Continental is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

B. Stauffer Chemical Company

8. Respondent Stauffer Chemical Company ("Stauffer") is a corporation organized and existing under the laws of the State of California, with its principal office and principal place of business at 380 Madison Avenue, New York, New York 10017.

9. Stauffer, in 1965, was the 210th largest industrial corporation in the United States in terms of sales and the 161st largest in terms of assets. Stauffer's total sales in 1965 exceeded $326 million; its assets, as of December 31, 1965, were approximately $324 million; and its retained earnings were more than $117 million.

10. Stauffer is principally a producer of industrial and agricultural chemicals. The products of its Plastics Division, one of Stauffer's seven domestic operating divisions, include polyvinyl chloride resins and vinyl film and sheeting.

11. Stauffer is a significant producer of polyvinyl chloride resins. Its new plant at Delaware City, Delaware went on stream in the spring of 1966 and has a projected capacity of 60 million pounds of polyvinyl chloride resins per year by 1967.

12. Toscony-Kayetex, a wholly owned subsidiary of Stauffer, produces flexible vinyl film and sheeting, printed vinyl fabrics and laminates of vinyl with other materials. In the first six months of 1965, Toscony-Kayetex processed almost 9 million pounds of polyvinyl chloride resins.

13. Stauffer produces substantial amounts of chlorine, a basic raw material for vinyl chloride monomer. In 1964, Stauffer produced nearly 388 million pounds of chlorine.

14. Stauffer is a participant with Atlantic Richfield Company in American Chemical Corporation, a joint venture established in 1958 for the production of vinyl chloride monomer, polyvinyl chloride and other products. Stauffer is also a participant with American Hoechst Corporation, a wholly owned subsidiary of Farbwerke Hoechst A. G. of West Germany, in Stauffer Hoechst Polymer Corporation, a joint venture established in 1964 for the production of rigid vinyl film and sheeting.

15. Stauffer is and for many years has been extensively engaged in the purchase, sale and shipment across State lines of industrial and agricultural chemicals, plastics and other products. Stauffer is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

III. THE NATURE OF TRADE AND COMMERCE

A. Vinyl Chloride Monomer

16. The vinyl chloride monomer industry has grown rapidly. Between 1960 and 1965 production of vinyl chloride monomer doubled. In 1965, over two billion pounds of vinyl chloride monomer, valued at approximately $121 million, were produced.

17. Vinyl chloride monomer is manufactured for principally one use, the production of polyvinyl chloride resins. For this reason, the growth of the vinyl chloride monomer industry is closely related to the increasing use of polyvinyl chloride resins and compounds.

18. Vinyl chloride monomer may be produced by cracking ethylene dichloride or by reacting acetylene with hydrogen chloride in the presence of a catalyst. The essential raw materials for the first process are ethylene and chlorine and for the second process, acetylene. Present indications are that domestic ethylene-based plants produce more economically than acetylene-based plants.

19. The vinyl chloride monomer industry is highly concentrated. In 1965, there were 13 companies producing vinyl chloride

monomer. In that year, the top four and nine firms accounted for 62.9 and 91.2 percent, respectively, of total industry production.

20. Barriers to entry into the production of vinyl chloride monomer are significant. One of these entry barriers is economies of scale. The average sized plant in 1965 had a capacity of approximately 150 million pounds per year and the smallest had a capacity of about 40 million pounds per year. Another entry barrier results from the widespread vertical integration of vinyl chloride monomer producers forward into the production of polyvinyl chloride resins and backward into the production of essential raw materials.

B. Polyvinyl Chloride Resin

21. The polyvinyl chloride resin industry has been characterized by rapid growth. Since 1960, production of polyvinyl chloride resins has almost doubled. In 1965, over 1.8 billion pounds of polyvinyl chloride resins, valued at approximately $312 million, were produced.

22. A variety of products can be made from polyvinyl chloride resins and compounds, including pipe, pipe fittings, rigid sheet, containers, phonograph records, floor tile, wall coverings, shower curtains, raincoats, tubing and, more recently, bottles.

23. The polyvinyl chloride resin industry is highly concentrated. In 1965, there were 28 companies producing polyvinyl chloride resins, but the top four companies accounted for 47.3 percent of total production of these resins, and the top eight companies accounted for 70.7 percent.

24. Widespread backward and forward vertical integration of polyvinyl chloride resin producers provides significant barriers to entry into the polyvinyl chloride resin industry.

IV. ACQUISITION OF THE THOMPSON COMPANIES

A. Description of The Thompson Companies

25. On September 18, 1964, Continental entered into a contract with the stockholders of Thompson Chemical Company and Apex Tire and Rubber Company, both Rhode Island corporations, and Monroe Manufacturing Company, a Mississippi corporation (hereinafter referred to collectively as the "Thompson Companies"), whereby Continental acquired all the issued and outstanding capital stock of the Thompson Companies and certain real estate utilized by the Thompson Companies and owned by Hay Realty Corporation, a Rhode Island corporation. The consideration paid by Continental was $30 million plus an additional

sum, contingent on the earnings of the acquired companies, not to exceed $6 million.

26. At the time of acquisition, the Thompson Companies were the largest producers of polyvinyl chloride resins without a captive source of vinyl chloride monomer. They ranked among the eight largest producers of polyvinyl chloride resins in 1963, the year prior to acquisition by Continental.

27. In 1963, the Thompson Companies sold over 94 million pounds of polyvinyl chloride resins for more than $12.5 million. Total sales by the Thompson Companies in 1963 were in excess of $33 million.

28. At the time of their acquisition by Continental and continuing until their dissolution, Thompson Chemical Company, Apex Tire and Rubber Company and Monroe Manufacturing Company were engaged in the purchase of vinyl chloride monomer and/or other chemical and nonchemical products and in the sale and shipment of polyvinyl chloride resins and compounds and/or other chemical and nonchemical products across State lines. Each of the aforesaid companies was engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

B. Background of the Acquisition

29. As early as 1961, officials of Continental planned a vinyl chloride petrochemical complex for the production of both vinyl chloride monomer and polyvinyl chloride resins.

30. At the time that the acquisition of the Thompson Companies was under study, the determination of the value of the Thompson Companies to Continental was predicated on the premise that Continental would soon be a basic manufacturer of vinyl chloride monomer.

31. The Thompson Companies were liquidated into Continental in December 1964. The former assets of the Thompson Companies are now being operated by Thompson Apex Company, a Delaware corporation wholly owned by Continental.

C. Violations

32. Continental's acquisition of all the capital stock of the Thompson Companies and certain realty owned by Hay Realty Corporation may substantially lessen competition or tend to create a monopoly in the vinyl chloride monomer and/or polyvinyl chloride resin industries in the United States in violation of Section 7 of the Clayton Act, and the contract whereby such acquisition was made and the combination between Continental and the Thompson Companies are in unreasonable restraint of trade and

mmerce and may hinder or have a dangerous tendency to hinder mpetition unduly in the vinyl chloride monomer and/or polynyl chloride resin industries thereby constituting an unfair act method of competition in commerce in violation of Section 5 the Federal Trade Commission Act, in that the following effects, nong others, may result:

(a) Actual or potential foreclosure may result from the elimation of the Thompson Companies as independent customers vinyl chloride monomer, thus depriving competitors of Conental of a fair opportunity to compete;

(b) The elimination of a significant independent producer of lyvinyl chloride resins may have a tendency to accelerate the end toward vertical integration and elimination of independent oducers of vinyl chloride monomer and of other independent oducers of polyvinyl chloride resins;

(c) Potential competition in the production and sale of polynyl chloride resins may be substantially lessened; but for the quisition, Continental was a significant potential entrant into e production of polyvinyl chloride resins;

(d) Actual and potential competition in the production and e of vinyl chloride monomer and polyvinyl chloride resins may substantially lessened by reason of the heightened barriers to ry resulting from the acquisition;

(e) Already high concentration levels in the production and e of vinyl chloride monomer and polyvinyl chloride resins may substantially increased and the possibility of deconcentration ened;

(f) Continental will have competitive advantages over nongrated producers of vinyl chloride monomer and polyvinyl ride resins to the detriment of actual and potential competi; and

(g) Nonintegrated producers of polyvinyl chloride resins will eprived of a noncompeting source of supply of vinyl chloride omer.

V. JOINT VENTURE OF CONTINENTAL AND STAUFFER

A. Description of the Joint Venture

On April 1, 1966, Continental and Stauffer executed a nomer Agreement," effective February 1, 1966, establishing nt venture. By this agreement each firm acquired an equal ided interest in a vinyl chloride monomer plant being jointly ructed by the companies. The plant is being built at a pro-d cost of $18.5 million on a site at Lake Charles, Louisiana n, prior to the effective date of the agreement, was wholly

owned by Continental. Pursuant to "Related Agreements" to the "Monomer Agreement," Stauffer acquired from Continental an undivided one-half interest in the plant site and also agreed to operate the plant utilizing Stauffer technology. Continental, pursuant to the "Related Agreements," acquired from Stauffer all of the latter's "Technical Information" and an option to license "Stauffer's Technical Information," both of which relate to vinyl chloride monomer. (The "Monomer Agreement" and "Related Agreements" are hereinafter referred to collectively as the "contract.")

34. The vinyl chloride monomer plant will have a capacity of 600 million pounds per year; Continental and Stauffer each has a right to purchase one-half of the output. Operations are projected at 75 percent capacity in 1968 and 100 percent capacity in 1970, thus creating one of the largest producers in the industry.

B. Background of the Establishment of the Joint Venture

35. For several years prior to the establishment of this joint venture, Continental had been working on developing a process for the production of vinyl chloride monomer on a commercial scale. The process Continental was developing served as one of the bases for its evaluation of the profitability of an integrated vinyl chloride monomer complex when acquisition of the Thompson Companies was under consideration. Stauffer, through its participation in American Chemical Corporation, had already developed a commercial process for producing vinyl chloride monomer.

36. At the time of the establishment of the joint venture, Stauffer was building a polyvinyl chloride resin plant at Delaware City, Delaware, which was expected to consume 60 million pounds of vinyl chloride monomer in its first year of operation. On the basis of an inquiry into the nature of the market for vinyl chloride monomer, Stauffer personnel firmly maintained that Stauffer could secure enough business to warrant building a vinyl chloride monomer plant with an annual capacity of 300 million pounds. On the basis of Stauffer's projections, a 300 million pound plant would not be large enough to satisfy its requirements after 1970.

37. Continental's acquisition of the Thompson Companies in 1964 provided Continental with an outlet which was estimated would consume more than 200 million pounds of vinyl chloride monomer in 1967, the first year of operation of the Continental-Stauffer joint venture plant.

38. Continental is building an ethylene plant at Lake Charles, Louisiana. The plant, expected to be completed in early 1968, will

have an annual capacity of 500 million pounds of olefins, principally ethylene. Part of the output will be utilized by the vinyl chloride monomer joint venture of Continental and Stauffer, part by Continental's industrial alcohol plant at Lake Charles, Louisiana and part by Calcasieu Chemical Company, a producer of ethylene glycol affiliated with Continental. Continental's interest in constructing an ethylene plant to supply existing ethylene requirements afforded it an additional incentive to build a vinyl chloride monomer plant.

C. Violations Charged

39. The acquisition of certain assets and rights of Stauffer by Continental and of certain assets and rights of Continental by Stauffer through the contract which established and through the establishment of a joint venture for the production of vinyl chloride monomer may substantially lessen competition or tend to create a monopoly in the vinyl chloride monomer and/or polyvinyl chloride resin industries in the United States in violation of Section 7 of the Clayton Act, and the contract and combination between Continental and Stauffer are in unreasonable restraint of trade and commerce and may hinder or have a dangerous tendency to hinder competition unduly in the vinyl chloride monomer and/or polyvinyl chloride resin industries thereby constituting an unfair act or method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act, in that the following effects, among others, may result:

(a) Potential competition in the production and sale of vinyl chloride monomer has been eliminated; but for the joint venture of Continental and Stauffer there is a reasonable probability that both Continental and Stauffer would have separately entered into the production of vinyl chloride monomer; at the least, there is a reasonable probability that one company would have separately entered into the production of vinyl chloride monomer while the other company would have remained a significant potential competitor;

(b) The formation and operation of the joint venture has created inducements and incentives for avoidance of competition between Continental and Stauffer in the production and sale of vinyl chloride monomer, polyvinyl chloride resins and other products which Continental and Stauffer may presently or in the future produce or sell;

(c) Competition generally in the production and sale of vinyl chloride monomer and/or polyvinyl chloride resins may be substantially lessened;

(d) Actual and potential competition in the production and sale of vinyl chloride monomer and polyvinyl chloride resins may be substantially lessened by reason of the heightened barriers to entry resulting from the joint venture;

(e) Already high concentration levels in the production and sale of vinyl chloride monomer and polyvinyl chloride resins may be substantially increased and the possibility of deconcentration lessened; and

(f) Competitors in the petrochemical industry and in other industries may be encouraged to participate in joint ventures as a means of avoiding, lessening, restraining or suppressing competition *inter sese*.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Continental Oil Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 30 Rockefeller Plaza, New York, New York 10020.

Respondent Stauffer Chemical Company is a corporation organized and existing under the laws of the State of Delaware, with

an office and place of business at 380 Madison Avenue, New York, New York 10017.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That, within ninety (90) days from the start-up of vinyl chloride monomer production or six (6) months from the effective date of this Order, whichever is earlier, (A) Stauffer Chemical Company (hereinafter referred to as "Stauffer") shall sell to Continental Oil Company (hereinafter referred to as "Continental"), and Continental shall purchase from Stauffer, all interests held by Stauffer in or relating to the vinyl chloride monomer manufacturing facility constructed by Continental and Stauffer near Lake Charles, Louisiana, and all assets, rights and other interests obtained by Stauffer pursuant to the Monomer Agreement and Related Agreements effective as of February 1, 1966, and (B) Stauffer and Continental shall terminate said Monomer Agreement and Related Agreements.

II

It is further ordered, That Continental, within two (2) years from the effective date of this Order, divest absolutely and in good faith, to a purchaser or purchasers (such purchaser or purchasers being hereinafter referred to as "Purchaser") approved by the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible (subject to any outstanding foreign licenses), including, but not limited to, all plants, machinery, equipment, patents, patent rights, know-how and technology, trade names, trademarks, customer lists and good will acquired by Continental as a result of its acquisition of the stock of Thompson Chemical Company and Apex Tire and Rubber Company and of certain real estate utilized by these companies and owned by Hay Realty Corporation, together with all additions and improvements thereto and replacements thereof; such divestiture shall be in good faith to a Purchaser who, insofar as Continental can reasonably determine, will operate such assets as a going concern and effective competitor in the manufacture and sale of polyvinyl chloride resins and compounds and fabricated products processed from such compounds; that the Purchaser of the divested facilities and Continental enter into a purchase and sale contract

under which Continental will agree to sell and such Purchaser will agree to buy the divested facilities' total needs of vinyl chloride monomer through December 31, 1969, at a price which is reasonable and in no event less favorable than that then being offered by Continental to, or received by Continental from, any other customer; and that the Purchaser of the divested facilities grant to Continental a nonexclusive, royalty-free license, with the right to sublicense outside the United States, under all patents, patent rights, know-how and technology acquired by said Purchaser from Continental pursuant to this Order which relate to polyvinyl chloride resins and compounds, plasticizers and garden hose.

III

It is further ordered, That, if the consideration received for the divestiture required to be made pursuant to this Order is not entirely cash, nothing in this Order shall be deemed to prohibit Continental or any of its subsidiaries from accepting and enforcing a lien, mortgage, pledge, deed of trust or other security interest for the purpose of securing to Continental full payment of the price, with interest, received by Continental in connection with the divestiture; but if after bona fide divestiture including any disposal of any of the assets, in accordance with the provisions of this Order, Continental, by enforcement of such security interest regains direct or indirect ownership or control of any substantial portion of the assets, said ownership or control regained shall be redivested subject to the provisions of this Order, within such reasonable period as is granted by the Commission for this purpose.

IV

It is further ordered, That, pending divestiture or sale, Continental shall not make or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of the companies and/or plants to be divested or sold pursuant to this Order which may impair their present capacity or market value, unless such capacity or value is restored prior to divestiture or sale.

V

It is further ordered, That Continental shall assist any one (1) firm, not engaged in the production of either vinyl chloride monomer or polyvinyl chloride resin, desiring to enter into the production of vinyl chloride monomer in the United States and approved by the Federal Trade Commission, by any portion or all of the following, at the option of such firm:

(A) Within five (5) years from the effective date of this Order, granting (to the extent it is legally free to do so) a nonexclusive license to such firm under any or all patents, patent rights, know-how and technology and any improvements therein relating to the production of vinyl chloride monomer then owned or controlled by Continental at a price and on terms and conditions which are reasonable and in no event less favorable than those granted to any other domestic licensee of Continental, and/or

(B) Entering into and performing a purchase and sale contract with such firm under which Continental will agree to purchase and such firm will agree to supply, for a period of three (3) years from the startup of production by such firm, but in no event beyond December 31, 1977, a quantity of vinyl chloride monomer estimated to be 20% of Continental's needs of vinyl chloride monomer for internal use in each year of said contract period, or such lesser quantity as such firm may specify in the contract, at a competitive price, provided such firm has been approved by the Federal Trade Commission and has notified Continental, within five (5) years from the effective date of this Order, of its intent to sell under this paragraph.

VI

It is further ordered, That Stauffer shall assist any one (1) firm, not engaged in the production of either vinyl chloride monomer or polyvinyl chloride resin, desiring to enter into the production of vinyl chloride monomer in the United States and approved by the Federal Trade Commission, by any portion or all of the following, at the option of such firm, provided Stauffer has not already committed itself in good faith to build a new plant in the United States for the commercial production of vinyl chloride monomer and notified the Commission of its commitment:

(A) Within five (5) years from the effective date of this Order, granting (to the extent it is legally free to do so) a nonexclusive license to such firm under any or all patents, patent rights, know-how and technology and any improvements therein relating to the production of vinyl chloride monomer then owned or controlled by Stauffer at a price and on terms and conditions which are reasonable and in no event less favorable than those granted to any other domestic licensee of Stauffer, and/or

(B) Entering into and performing a purchase and sale contract with such firm under which Stauffer will agree to purchase and such firm will agree to supply, for a period of three (3) years from the startup of production by such firm, but in no event beyond December 31, 1977, a quantity of vinyl chloride monomer estimated to be 20% of Stauffer's total needs of vinyl chloride monomer in each year of said contract period, or such lesser quantity as such firm may specify in the contract, at a competitive price, provided such firm has been approved by the Federal Trade Commission and has notified Stauffer, within five (5) years from the effective date of this Order, of its intent to sell under this paragraph.

VII

It is further ordered, That for a period of five (5) years from the start-up of its vinyl chloride monomer production or from the effective date of this Order, whichever is later, Continental shall make available to producers of polyvinyl chloride who are not also producers of vinyl chloride monomer (by joint venture or otherwise) and who will enter into a contract of at least one (1) year's duration a quantity of vinyl chloride monomer equal to thirty-three and one-third (33⅓) percent of Continental's production thereof at a price which is reasonable and in no event less favorable than that then being offered by Continental to any other customer, regardless of the quantity purchased or the duration of the contract (For the purposes of this Order, "offered" shall include the voluntary renewal or extension of a contract by action or inaction on the part of Continental.) : *Provided, however,* That if because of its own requirements and contractual commitments with other customers Continental would be required to purchase vinyl chloride monomer in order to satisfy its obligation under this paragraph, Continental shall be obligated to supply vinyl chloride monomer under this paragraph only if and to the extent that it can purchase for resale vinyl chloride monomer, and in such event Continental's resale price shall be determined as provided above in this paragraph but shall not be less than the price actually paid by Continental.

VIII

It is further ordered, That, within ninety (90) days from the effective date of this Order, Stauffer shall grant to Continental a nonexclusive license, on reasonable terms, to Stauffer's vinyl

chloride monomer process, patents, patent rights, know-how and technology.

IX

It is further ordered, That for a period of ten (10) years from the effective date of this Order, Continental shall not acquire, directly or indirectly, through subsidiaries, joint venture or otherwise, the whole or any part of the stock, share capital or assets (other than products, machinery or equipment purchased in the ordinary course of business and nonexclusive licenses under patents, know-how and technology) of any domestic concern engaged in the production or sale of vinyl chloride monomer or production, processing, conversion or sale of any polyvinyl chloride resin, compound or fabricated product (except a domestic concern the business activities of which is polyvinyl chloride are limited to the production and sale of polyvinyl chloride fabricated products and which, in the year prior to Continental's acquisition, had total sales of polyvinyl chloride fabricated products of less than one million dollars ($1,000,000)), without the prior approval of the Federal Trade Commission.

X

It is further ordered, That for a period of ten (10) years from the effective date of this Order, Stauffer shall not acquire, directly or indirectly, through subsidiaries, joint venture or otherwise, the whole or any part of the stock, share capital or assets (other than products, machinery or equipment purchased in the ordinary course of business and nonexclusive licenses under patents, know-how and technology) of any domestic concern engaged in the production or sale of vinyl chloride monomer, without the prior approval of the Federal Trade Commission.

XI

It is further ordered, That in the event Continental, despite bona fide efforts to do so, is unable to divest as required by this Order within the specified time, Continental may apply to the Commission at such time for relief from such obligation; and the Commission may issue such order as it deems appropriate regarding such obligation.

XII

It is further ordered, That:

(A) Within twenty (20) days from the sale to Continental of Stauffer's interests in the vinyl chloride monomer manu-

facturing facility, Continental and Stauffer shall each report in writing to the Federal Trade Commission their compliance with paragraphs I and VIII of this Order;

(B) Within sixty (60) days from the effective date of this Order, and every sixty (60) days thereafter until the divestiture required by paragraph II of this Order has been completed, Continental shall report in writing to the Federal Trade Commission its plans for effecting such divestiture and the action it has taken in implementation thereof, including, (i) the name, address and official capacity of the individual or individuals designated to carry out such divestiture and to negotiate with interested parties, (ii) a brochure, presentation or other writing containing all of the essential information necessary to permit an interested party to evaluate the facilities to be divested, (iii) a summary of any efforts made and to be made in advertising and affirmatively announcing the availability of the facilities to be divested, (iv) the particular efforts made to locate and interest prospective purchasers not previously engaged in the industry, (v) a summary of contacts and negotiations relating to the sale of facilities ordered to be divested, including the identities of all parties expressing interest in the acquisition of any of the facilities to be divested and, subject to any legally recognized privilege, copies of all written communications pertaining to negotiations, offers to buy or indications of interest in the acquisition of the whole or any part of the facilities to be divested and (vi) copies of all agreements and forms of agreement relating directly or indirectly to the proposed sale of the facilities to be divested;

(C) Within sixty (60) days from the effective date of this Order and every six (6) months thereafter, Continental and Stauffer shall each report in writing to the Federal Trade Commission the steps they have taken to comply with paragraphs V, VI and VII of this Order and any steps taken to inform possible interested parties; and

(D) Within sixty (60) days from the effective date of this Order and annually thereafter, Continental and Stauffer shall each report in writing to the Federal Trade Commission the manner and form in which they intend to comply, are complying or have complied with paragraphs IX and X of this Order.

EXHIBIT D

UNITED STATES GOVERNMENT

Memorandum

TO : Commission.

DATE: August 12,1968

FROM : Chief, Compliance Division,
Bureau of Restraint of Trade.

SUBJECT: Continental Oil Company, et al.,
Docket No. C-1270.

Recommendation that Proposed Purchasers be Approved.

We forward herewith the request of Continental Oil Company for approval of Olin Mathieson Chemical Corporation and of Elmgrove Corporation as purchasers of the Thompson Chemical Company and the Apex Tire and Rubber Company businesses. Olin is purchasing the assets used in the production of PVC resins (and to some extent PVC compounds), and Elmgrove is purchasing fabricating facilities.

The Commission's order issued in this matter on November 21, 1967. Paragraph I thereof required the dissolution of a joint venture between Continental and Stauffer Chemical Company for the production of vinyl chloride monomer (VCM) at Lake Charles, Louisiana. As required by the order Continental bought the Stauffer interests, and received and is now receiving the benefit of Stauffer's know how in the production of VMC during the initial production phases of the plant. The thrust of the order from the staff's point of view was to obtain additional capacity and additional entrants into the VCM and also the PVC business. The dissolution of the joint venture put Continental into VCM production, giving it also Stauffer's know how, while leaving Stauffer free to enter into the production of VMC on its own. Moreover, to further the general objectives, both Continental and Stauffer are required, pursuant to Paragraphs V and VI, to license its VMC or PVC know how, although Stauffer is excused therefrom if it enters into the VCM industry itself. Finally, again to further these general objectives, Continental is required, pursuant to Paragraph II of the order, to divest Thompson-Apex, a substantial PVC company, the staff being of the impression that any such concern would probably itself expand into VCM at some future date as indeed Continental and all other PVC concerns have with but a few exceptions.

Additional capacity and additional entrants are basic to the three petrochemical orders issued thus far by the Commission, and in each instance this has been sought by dissolution of a joint venture, divestiture, and the granting of licenses. In the formative stages of these several branches of the petrochemical industry, it is felt that the technology must be made available to the greatest extent possible, and that additional companies must be brought into the industry before a few companies become dominant and are able to block entry by other firms. Moreover, the industry being already largely integrated, and already requiring substantial capital investment, competition seems to be best served now and for the future by increasing the number of companies in the industry before optimal plant size becomes even larger.

The joint venture aside, the acquisitions challenged in this matter were that of a group of companies held by the same family. These companies were Thompson Chemical Company, Apex Tire and Rubber Company, and Monroe Manufacturing Company. The settlement agreed upon was that Continental would divide these acquisitions into two viable portions, and the Commission would then choose which portion it wanted divested. The staff, advised by an independent expert (Professor James Church of Columbia University), chose the Thompson-Apex divestiture and drafted in accordance with that choice the consent agreement and the stipulated order which the Commission in turn adopted. Continental Oil is as a result keeping the Monroe facilities, and divesting the Thompson-Apex facilities.

The proposed purchaser of the Thompson-Apex name and the fabricating facilities is the Elmgrove Corporation, which mainly is owned by the same family which sold these businesses to Continental Oil in the first place. The principle person is Norman M. Fain, who owns 52% of Elmgrove's stock. He has run the Thompson-Apex business for some twenty years, and is to some extent involved in other family concerns which include a structural steel plant, a retail department store, and a commercial warehouse and real estate operating company. Other members of the Fain family own the remainder of the Elmgrove stock. Mr. N. Fain will be the President of Thompson-Apex, and will be joined in the operation of the business by his brother, Irving J. Fain, and two other long term management employees.

The sale of Thompson-Apex to the Fains is being carried out by means of the transfer of the Thompson-Apex stock to Elmgrove. The purchase price is $14,000,000, of which $2,000,000 will be paid in cash at the closing and the remainder in yearly installments over a seven year period. Norman Fain has personally guaranteed the payment of the first three installments, and Continental Oil has retained a mortgage on the real and fixed personal property of Elmgrove (Thompson-Apex) to assure payment of the four remaining installments. Continental Oil is aiding the new corporation by guaranteeing that Thompson-Apex will have $4,000,000 in working capital. Moreover, it is delaying the withdrawal of dividends from Thompson-Apex by declaring the same before the actual divestiture but providing for payment at a considerably later date, after the new corporation will have had time to establish cash flow.

Prior to the closing with Elmgrove, the Thompson-Apex PVC resin facilities will be transferred to Olin. All other Thompson-Apex property remains with the company. This includes plants and facilities at Pawtucket, Rhode Island, and Hebronville and Wilmington, Massachusetts.

Exhibit F of the sales agreement is a contract whereby Thompson-Apex purchases from Continental Oil at least 75% of that company's production of garden hose. This hose is produced at the former Monroe facility, built by the Fains, and has always been marketed through Thompson-Apex. The contract, which runs through August 1, 1970, and is thereafter terminable on notice by either party, represents the continuation of the present marketing practices.

Thompson-Apex patents are remaining with the Thompson-Apex business, but Continental Oil by the purchase agreement has obtained a perpetual non-exclusive royalty free license to use the patents and to sub-license them outside the United States. Olin is granted the right, on the same basis, to such technology, know how, and patents as relate to the PVC resin business which it is buying from Continental Oil. These provisions conform to the final portion of Paragraph II of the order.

The contract with Olin Mathieson Corporation provides for the sale to Olin as a going business of the entire facility for the production of PVC resins, including the real property at Assonet, Rhode Island and at Freetown and Fall River, Massachusetts, and patents, know how, tools, customer lists, contract rights, designs, the name Thompson Chemical Company, etc.

The purchase price is $11,000,000 for that portion of the assets which have been designated Lease Assets, i.e., assets for which title will in fact pass to a leasing company which in turn leases them to Olin. For the non-lease assets, Olin will pay an additional sum in the form of Olin capital stock, totaling 145,285 shares now worth about $5,075,000. Pursuant to Article 3 of the contract, Olin substantially guarantees the purchase price and will issue additional shares to insure Continental an approximate payment of $7,700,000. Olin has a three year option to buy back its capital stock from Continental for $7,700,000, at $53 per share or at 97.5% of the then current value, whichever is higher. If it does not exercise that option, then nevertheless during the following two years it has the right to purchase the shares by meeting any other offer. Thereafter, Continental Oil has the right to dispose of the shares by means of a public offering via underwriters or otherwise. Each Olin share delivered to Continental as part of the purchase price will have noted thereon the Olin option and preferential right of purchase.

This type of stock arrangement has been before the Commission on two prior occasions, most recently in the Rawson divestiture by Foremost (C-1161) and before that in the Mead divestiture of its Chicago plant to Southwest Forest Industries (C-880), both of which were approved by the Commission. (Minutes of July 15, 1968 and June 14, 1967) It is also to be recognized that this particular form of the transaction - essentially a period during which the shares may not be sold except to the issuing company and not traded at all and involving thereby an investment letter and a pooling of interests - is governed by the SEC regulations relating to unregistered securities. Moreover, the entire arrangement, we understand, has the effect of deferring tax liability. The basic commercial reason for this kind of arrangement however seems to be that it bridges a price gap. In this instance, Continental Oil is plainly expecting to eventually get a higher price than Olin is now willing to pay, due to the rise in value of the Olin stock. At the same time, this type of arrangement permits Continental Oil to accept now a lower guaranteed minimum price. That minimum price is probably a higher price than Olin would otherwise offer, but it can nevertheless now do so because payment is deferred. In this context, the stock arrangement appears to be a legitimate commercial arrangement devoid of possible control of Olin by Continental. This is particularly true in the

instant case since the Olin shares held by Continental will be only about 1% of Olin's total issued and outstanding shares, which in 1967 number 15,011,000 shares.1/ This matter, moreover, will be handled as in the Rawson-Foremost matter, by requiring Continental Oil to not vote the Olin stock.

The proposed divestiture is the first divestiture, to the best of our recollection, where a portion of the assets are in fact sold to a leasing company, which in turn leases them to the proposed purchaser. Such leasing arrangements are becoming a standard commercial practice, and there appears to be no sound basis for excluding them from otherwise acceptable divestitures. Some reservations may be made for the case where the leasing company is, or is owned by, the respondent, but since the Commission considers that an acquisition may be made by lease, there seems no good reason why a divestiture may not be made by the same means, the respondent being the lessor, if the lease is of sufficiently long duration.

The contract provides in Exhibit A attached thereto that Olin will buy from Continental Oil its full requirements of VCM until December 31, 1969, and until such time thereafter as the contract is cancelled by either party on due notice. This substantially conforms to the provisions of Paragraph II of the order.

Exhibit C to the Olin-Continental agreement is a two year automatically renewable full requirements PVC contract between Olin and Thompson-Apex. This conforms to standard practice in the industry, and would in any event have been the actual arrangement between the PVC facility and the fabricating facilities if both had been purchased by the same purchaser, as had been anticipated at the settlement.

Part and parcel of the total deal is a consulting contract between Olin and Mr. N. Fain, who will act for a period of three years as an independent exclusive consultant to Olin in connection with the Assonet facilities for a yearly fee of $15,000. This is a continuation of the present relationship between Mr. Fain and Continental Oil. Since as noted above Continental Oil could have sold both the PVC and the fabricating facilities to a single purchaser, we have no objection to the consulting arrangement.

1/ The High Voltage divestiture (C-322) is to the best of our recollection the only other divestiture involving stock retention by respondent in the purchaser, but that occurred in a different context and does not appear relevant to the above discussion.

Olin Mathieson as proposed purchaser of the PVC facilities has given us some pause. Olin is a large corporation with annual sales, after the spin-off of Squibb, of about $900,000,000 a year. It is a diversified company deriving income from the following activities in the portion stated on the basis of sales and income:

Activity	% of Sales	% of Net Income
Chemicals	31.6%	26.5%
Fine Paper & Film	8.4%	9.1%
Metals	25.0%	22.5%
Paperboard, etc.	12.5%	14.0%
Firearms, etc.	22.5%	27.9%

Firearms and ammunition are produced by the Winchester-Western Division, while Olinkraft, Inc., had an integrated forest products operation which takes the tree through the pulp mill, the paperboard mill and into the container plant, and also produces lumber. Olin metals business is limited to aluminum and to brass, the former in a joint venture with Revere Copper and Brass. Olin also produces cellophane and lightweight fine paper for printing purposes but mainly for use by the cigarette industry.

Olin's chemical sales were about $285,100,000 in 1967, with net income thereon running about $14,319,000. Olin produces agricultural chemicals such as urea, pelletized fertilizers, mixed fertilizers, and other soil improving chemicals such as superphosphates, nitrate of soda, sulphate ofammonia, etc. It also produces for agricultural use pesticide ingredients and finished pesticides such as insecticides, fungicides, herbicides, etc. Olin has in addition a substantial inorganic chemical group, such as alkalis, chlorine and chlorine specialities, phosphates, hydrofluoric acid and flourine chemicals, nitrogen products including ammonia, nitric acid nitrates, sulfuric acid, sulfur, and hydrazine and hydrazine compounds. These various inorganic chemicals are used in a variety of industries, such as textiles, petroleum, explosives, missle fuel, fertilizers, pharmaceuticals, pulp and paper.

The inorganic chemical business is the largest segment of its chemical group, but its organic chemical segment, with sales of about $43.8 million in 1967, is significant. Its principal organic products are ethylene and propylene oxides and glycol derivities of each; glycol ethers,

polyalkylene glycols, a line of surfactants, ethanolamines and glycerine. These chemicals are all part of the petrochemical group. The end uses are such items as brake fluids, antifreeze, finish remover, solvent for fats, oil, waxes, paint, jet fuel, etc., intermediates for fibers and films, plasticizers, etc.

Olin does not make either VCM or PVC nor does it purchase either of these products. It does make ethylene and it does produce chlorine, from which VCM is made, so that in time it could be expected that Olin may, following its present venture into PVC, integrate backward into VCM. For this purpose, it could probably supply itself with sufficient chlorine, but its present ethylene capacity is totally inadequate for this purpose. Olin would for the purpose of producing VCM probably buy natural gas or LP-Gas on the open market, probably by means of a long term supply contract with some petroleum company. It is extremely doubtful, however, that Olin would ever enter the VCM market unless it obtains PVC facilities.

There are clearly a number of more likely potential competitors in the VCM market than Olin. In recent years the technology in the industry has changed to favor petroleum companies over chemical companies as potential competitors in this market.

This technological change in the industry has resulted in a shift to the production of VCM from ethylene and chlorine rather than from acetylene. Acetylene was primarily derived from calcium carbide by chemical processes on the whole, although it may be derived by chemical companies from natural gas or hydrocarbons. Ethylene however is only derived from petroleum or natural gas. While ethylene is available on the open market, it is of course most available to the petroleum companies, and by virtue of this fact these companies have replaced the chemical companies as the most likely potential entrants into the VCM industry.

Olin is even a more remote potential competitor into the PVC market. While virtually every current PVC producer is forwardly integrated into fabrication of PVC products, Olin possesses no fabricating facilities which use PVC. In addition, as discussed above, Olin does not produce VCM, in contrast to the vast majority of current PVC companies. Moreover, the purchase of the PVC facilities from Continental, if approved, will mark Olin's initial entry into the plastic resin industry.

On the basis of the information and documentation provided, and the above analysis, we conclude as follows:

1. Elmgrove Corporation, the proposed purchaser of the fabricating facilities being divested by Continental Oil, is a thoroughly experienced and adequately financed company which should be able to continue the Thompson-Apex fabricating business as a viable concern. This conclusion rests not on the short history of Elmgrove, which has just been formed for the purpose of this purchase, but on the fact that it is owned by the former owners of Thompson-Apex, who have made it a viable concern in the past and who are plainly experienced and capable people.

2. Olin Mathieson, a large diversified corporation with annual sales of about $900,000,000 and 1967 net profits of $54,034,000 or 9.6% on invested capital, has sufficient technological background and adequate financial resources, and consequently should be able to continue Thompson Chemical as a viable concern in the PVC business. In this connection we note again that Olin has some very limited petrochemical experience; is not now in either PVC or VCM; and is a very distant potential competitor in those industries. Moreover Olin has the technological and financial resources to enter the VCM industry and with the added incentive provided by the divested PVC facilities may be expected to enter the VCM business at some future date.

3. The terms of the two purchase agreements are on the whole devoid of any objectionable features when considered in the context of the industry, the divestiture itself and the objectives sought. The only troublesome point is the delivery of Olin capital stock to Continental Oil, but since it represents only about 1% of Olin's issued and outstanding shares and is in our judgment strictly a commercial arrangement designed to bridge a price gap rather than any effort to exercise control over Olin, we have acceded thereto, subject however to the condition that the Olin stock not be voted by Continental Oil.

On the basis of the foregoing, we recommend that the Commission approve the Elmgrove Corporation and Olin Mathieson Corporation as purchasers of the Thompson and Apex businesses to be divested in this matter. We forward herewith a letter of notification for Continental Oil,

granting approval subject to acceptance by it of the non-voting proviso with respect to the Olin capital stock.

It is requested that the file be returned to this Division.

Respectfully submitted,

J. J. Gercke. 8/7.

Joseph J. Gercke,
Chief, Compliance Division,
Bureau of Restraint of Trade.

APPROVED:

Wilmer L. Tinley 8-8

Wilmer L. Tinley,
Assistant Director,
Bureau of Restraint of Trade.

CONCURRENCE:

Roy A. Prewitt, 8-7-68

Roy A. Prewitt,
Assistant Director,
Bureau of Economics.

Cecil G. Miles

Cecil G. Miles,
Director,
Bureau of Restraint of Trade.

Attachments.

CJBatter:dsh/dg/gjc.
C/B 8-6-68

EXHIBIT E

OPTIONAL FORM NO. 10
5010-104
UNITED STATES GOVERNMENT

Memorandum

TO : File.

DATE: January 11, 1968.

FROM : Carl J. Batter, Jr.,
Attorney, Compliance Division,
Bureau of Restraint of Trade.

SUBJECT: Continental Oil Company,
Docket No. C-1270.

At their request we met this morning with Mr. Kaine, manager of the petrochemical Continental Oil business and with Mr. McColpin of Continental Oil's legal staff. Present for the Commission were Mr. Gercke and myself. The business of the meeting generally was to discuss divestiture.

I first indicated, however, to Continental Oil that we would have some slight problem about the confidentiality to be accorded the license agreement previously provided us. I stated that I did not think this was of major interest to Continental who had simply come along with Stoffer. They quickly confirmed this point and I therefore stated that we would wait for Stoffer's answer.

Mr. Kaine told us that they had received approximately 44 formal inquiries about the properties to be divested under the order, plus a substantial number of telephone calls. He said that three of that 44 had since withdrawn their indications of interest and he stated further that 15 of the 44 had gone beyond the initial examination of the brochure to a more serious consideration of the matter including the receipt of information which Continental Oil wanted to be kept confidential. Mr. Kaine next presented the general question of who is eligible. We answered first of all that we desired to have a new entrant, someone outside the petrochemical industry. Attacking the matter from the other end, we also indicated that we did not want anyone in the PVC business as fabricator or manufacturer of genetic material. In between these two positions there were probably a large number of shadings between good and bad from the point of view of acceptability. I inquired about the amount of money we were dealing with. In reply Mr. Kaine stated that they were thinking in terms of about $30 million. In reply to a question from Mr. Gercke he stated that of course they would like cash but would be prepared to take paper to facilitate a sale.

There was then and later some discussion of price. It appeared that in 1966 the properties to be divested made a nice profit which Continental Oil considered to be a fair indication of its actual earning ability. In 1967 due to the reduction in the price for resin, the profits have been cut in about half. Consequently, Continental Oil was thinking in terms of 12 to 14 times the 1966 earnings as a purchase price, although this would be half the price, earnings and ratio on the basis of the 1967 earnings. He mentioned some of the companies which were showing interest such as, Hollon Matheson, Crown Central Petroleum and Standard Oil of Ohio.

Mr. Gercke spoke for a few moments on the potential competition aspect, indicating that on the whole, he considered a major petroleum company to be a normal and natural competitor in this business and consequently, would not look with favor upon such a company. There was some discussion around this point. Mr. McColpin pointed out that Standard Oil of New Jersey was actually in this business of PVC and consequently it could be argued that it should be eligible although he recognized that it was a very substantial company which would give us difficulty. By comparison, however, he thought that Standard Oil of Ohio was not such a large company and just might fit the prescription. Mr. Kaine indicated that they were apparently interested in the best price they could get and that they were actively balancing this interest against the objectives of the Commission to come up with a purchaser to fit their requirements for the best price, and the Commission's requirements for an acceptable purchaser.

Mr. Kaine indicated that they were determined at this time to sell the properties as a single group and would be sounding out that matter for another two or three weeks, perhaps a month. He did indicate that they had interest from the prior owners of the fabricator industry and would be inclined to sell to them if nothing else developed, in which case the resin facilities would have to be sold to someone else. They wondered whether a supply agreement between the two purchasers would create any problems for us. Mr. Gercke replied that a short term supply agreement normally did not present very great problems and that we would want to be very careful and to look into this matter. Mr. Kaine indicated they would have a practical problem of finding a satisfactory formulation of resin and estimated that it would take the fabricator approximately a year to

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fully satisfy himself about other sources of supply. He added, however, that it was not only the fabricator who had to be satisfied but also the underwriters who would be more conservative than the fabricator himself. We left open at this meeting the question of whether the properties could be separated and Mr. Gercke for his part indicated that he was not shocked by the idea. For my part I told them I had no real idea and would want to look into it further and telephone them whenever we had some firm conclusion.

Carl J. Batter, Jr.
Carl J. Batter, Jr.,
Attorney, Compliance Division,
Bureau of Restraint of Trade.

CJBatter:dg

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EXHIBIT F

CERTIFICATE OF INCORPORATION

OF

THOMPSON APEX COMPANY

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FIRST. The name of the corporation is

THOMPSON APEX COMPANY

SECOND. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington 99, Delaware.

THIRD. The nature of the business, or objects or purposes to be transacted, promoted or carried on are:

(1) To engage in the business of manufacturing, compounding, developing, processing, synthetizing, buying, and otherwise producing and/or acquiring, holding and keeping, experimenting with and carrying on research in in connection with and selling at wholesale and retail of any state, form, nature, mixture or description, and any and all derivatives, products or by-products of:

(a) chemicals and chemical products;

(b) natural rubber, synthetic rubber and combinations of the two.

(2) To engage in the business of manufacturing, rebuilding, retreading, recapping and repairing generally automotive and airplane tires and tubes, and purchasing and selling at wholesale and retail of automotive and airplane tires and tubes of every kind, nature and description.

(3) To construct, lease, purchase or otherwise acquire, to hold, own, maintain, improve, operate or otherwise use, and to let, mortgage, sell, convey or otherwise dispose of or turn to account, any and all kinds of real and personal property and any and all rights and interests therein, useful or convenient in the conduct of the corporation's business, including, without limiting the generality of the foregoing:

(a) plants, refineries, mills, factories, laboratories, warehouses, storage tanks, offices, stores, residences and other buildings and structures;

(b) machinery, tools, implements, appliances, equipment and apparatus of every kind and description.

(4) To manufacture, process, purchase, own, handle, sell, import, export and generally to trade and deal in and with substances, raw materials, goods, wares and merchandise of every kind, nature and description, and to engage or participate, as principal or agent, and either alone or jointly with others, in any mercantile, industrial or trading business of any kind or character whatsoever.

(5) To conduct, carry on and engage in any experimental or research work in chemical, rubber, engineering and any other scientific or technical fields, and to render to any person, firm, association or corporation services of an engineering, scientific, technical or business nature, including, without limiting the generality of the foregoing, to engage in the actual management and operation of other businesses.

(6) To acquire all or any part of the business, goodwill, rights, assets and property of any person, firm association or corporation, to pay for the same in whole or in part in cash or with the stock, bonds or debentures of the corporation or otherwise, and to assume all or any part of the obligations and liabilities of any such person, firm, association or corporation.

(7) To apply for, register, obtain, take leases, licenses and immunities in respect of, purchase or otherwise acquire, and to hold, own, introduce, use, enjoy, develop, manufacture and sell under, grant leases, licenses

and immunities in respect of, mortgage, pledge, sell, assign, transfer or otherwise dispose of or turn to account, and in any manner deal with:

(a) inventions, devices, designs, formulae, processes and any improvements and modifications thereof;

(b) letters patent, patent rights, copyrights, trade names, trade-marks and other distinctive words and symbols indicating origin or ownership, granted by or recognized under the laws of the United States of America or of any state or subdivision thereof; or of any foreign country or subdivision thereof;

(c) any and all rights, privileges, licenses, grants and concessions connected with or appertaining to the foregoing.

(8) To acquire by purchase, subscription or otherwise, to receive, own and hold for investment or otherwise to mortgage, pledge, deposit, exchange, sell, assign, transfer or otherwise dispose of, and generally to deal in or with, any and all of the following (hereinafter sometimes referred to collectively as securities) to wit: all kinds of shares, stocks, voting trust certificates, trust certificates, scrip, warrants, rights, bonds, mortgages, debentures, trust receipts, notes and other choses in action, obligations and evidences of indebtedness of any corporation, joint-stock company, trust, association, partnership, syndicate, person, or governmental or public agency or authority, domestic or foreign, and evidences of any interest therein or with respect thereto; and while the owner or holder of any such securities, to exercise all the rights, powers and privileges of ownership or interest in respect thereof, including the right to vote and to give consents, and to do any and all acts or things deemed by the corporation to be necessary or advisable for the preservation, protection, improvement or enhancement of the value of such securities.

(9) To purchase, or otherwise acquire, hold, sell, pledge, transfer or otherwise dispose of, and to reissue or cancel, shares of the corporation's own capital stock and any other securities or obligations of the corporation in the manner and to the extent now or hereafter permitted by the laws of the State of Delaware; provided that shares of its own capital stock belonging to the corporation shall not be voted upon directly or indirectly.

(10) To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

(11) To borrow or raise money for any of the purposes of the corporation, from time to time, without limit as to amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable and non-negotiable instruments and evidences of indebtedness, and to secure the payment thereof and of the interest thereon by the mortgage upon, or pledge, conveyance or assignment in trust of, the whole or any part of the assets and property of the corporation, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such securities or other obligations of the corporation for its corporate purposes.

(12) To lend money to others, with or without collateral security; provided that no loans shall be made by the corporation to its officers and directors, and no loans shall be made by the corporation secured by shares of its own capital stock.

(13) To guarantee the payment of dividends on any stock, or the principal or interest or both of any bonds or other securities or obligations, and the performance of any contracts.

(14) To establish and maintain one or more offices, to conduct and carry on its business or operations or any part thereof, and to exercise any or all of its corporate rights, privileges and powers, in any or all of the states, districts, territories, colonies or dependencies of the United States of America and in any and all foreign countries and the territories, colonies or dependencies thereof.

(15) To conduct, carry on or engage in any other businesses, operations, or activities in connection with or incidental to those above mentioned, and to do everything necessary, proper, advisable or convenient for the attainment of any of the objects, the accomplishment of any of the purposes and the exercise of any of the powers hereinabove mentioned.

The objects and purposes specified in the foregoing clauses shall be construed as powers as well as objects and

ses, and the matters referred to in each clause shall, ss herein otherwise expressly provided, be in nowise limited eference to or inference from the terms of any other clause, shall be regarded as independent objects, purposes and ers. The enumeration herein of objects, purposes and powers all not be deemed to exclude by inference or otherwise any the rights, privileges, powers, objects or purposes which his corporation is or may be entitled to exercise under the ws of the State of Delaware now or hereafter in effect or im- ied by reasonable construction of said laws.

FOURTH. The total number of shares of stock which he corporation shall have authority to issue is ten (10) shares, ll of one class, and each such share shall have a par value of ne Hundred Dollars ($100.00) amounting in the aggregate to ne Thousand Dollars ($1,000.00).

FIFTH. The minimum amount of capital with which the orporation will commence business is One Thousand Dollars ($1,000.00).

SIXTH. The names and places of residence of the in- orporators are as follows:

NAMES	RESIDENCES
S. H. Livesay	Wilmington, Delaware
F. J. Obara, Jr.	Wilmington, Delaware
A. D. Grier	Wilmington, Delaware

SEVENTH. The corporation is to have perpetual ence.

EIGHTH. The private property of the stockholders shall e subject to the payment of corporate debts to any extent ever.

NINTH. The following provisions are inserted for the gement of the business and for the conduct of the affairs he corporation and for further definition, limitation and lation of the powers of the corporation and of its directors stockholders;

(1) In furtherance and not in limitation of the powers conferred by statute, the board of directors of the corporation is expressly authorized:

(a) without the assent or vote of the stockholders, except where otherwise expressly provided in the by-laws, to make, alter or repeal the by-laws of the corporation.

(b) to set apart out of any funds of the corporation available for dividends a reserve or reserves for any proper purpose and to vary the amount of or abolish any such reserve in the manner in which it was created;

(c) to determine the use and disposition of any surplus or net profits of the corporation and to fix the times for the declaration and payment of dividends;

(d) to authorize and cause to be executed mortgages and liens upon any or all of the property and assets of the corporation;

(e) to determine from time to time whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation (other than the stock ledger), or any of them, shall be open to the inspection of stockholders;

(f) to exercise all such further powers and authority as may be lawfulled conferred upon the directors in the by-laws of the corporation.

(2) The corporation may enter into contracts or transact business with one or more of its directors or officers, or with any corporation or firm of which one or more of its directors or officers are directors, officers or members, or in which they may have a pecuniary or other interest; and, in the absence of fraud, such contracts or transactions shall not be invalidated or in any wise affected by the fact that such directors or officers are so connected with or have any interest in any such corporation or firm even though the vote or action of such directors or officers may have been necessary to obligate the corporation upon such contracts or transactions, provided that the fact of such connection or such interest shall have been disclosed or shall have been known to all of the directors of the corporation. At any meeting of the board of directors of the corporation which shall authorize or ratify any such contracts or transactions, any such director having such connection or interest may vote or act thereat with like force and effect as if he did not have such connection or interest, provided that in such case such connection or interest shall have been disclosed or shall have been known to all of the directors. No director or officer shall be disqualified from holding office as director or officer of the corporation by reason of any such connection or interest. In the absence of fraud, no director or officer having any such connection or interest shall be liable to the corporation or to any stockholder or creditor thereof, or to any other person, for any loss incurred under or by reason of such contracts or transactions, nor shall any such director or officer be accountable to the corporation or to any stockholder or creditor thereof or to any other person for any gains or profits realized under or by reason of such contracts or transactions.

(3) The directors in their discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders or at any special meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the stock of the corporation which is represented in person or by proxy at such meeting and entitled to vote thereat (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding upon the corporation and upon all the stockholders as

hough it had been approved or ratified by every stockholder f the corporation, whether or not the contract or act would therwise be open to legal attack because of directors' nterest or for any other reason.

(4) Each director and each officer of the corporation shall be indemnified by the corporation against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of his being or having been a director or officer of the corporation (whether or not he continues to be such a director or officer at the time of incurring such expenses), except in relation to matters as to which he shall adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duties as such officer or director. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled hereunder and under any by-laws, agreement, vote of stockholders or otherwise, The corporation shall have the right to intervene in and defend all such actions, suits or proceedings brought against any present or former director or officer of the corporation. Whenever in this paragraph a director or officer is referred to, such reference shall be inclusive of his heirs, executors and administrators.

(5) Meetings of the stockholders of the corporation may be held outside the State of Delaware, if the by-laws so provide.

(6) The books of the corporation may be kept (subject to any provisions contained in the statutes) outside the State of Delaware at such place or places as may from time to time be designated by the board of directors.

(7) Election of directors of the corporation need not be by ballot unless otherwise provided in the by-laws.

TENTH. Whenever a compromise or arrangement is proposed ween this corporation and its creditors or any class of them /or between this corporation and its stockholders or any class them, any court of equitable jurisdiction within the State of aware may, on the application in a summary way of this corpo- ion or of any creditor or stockholder thereof, or on the appli-

of any receiver or receivers appointed for this corporation under the provisions of section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

ELEVENTH. The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being each of the incorporators before named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 8th day of December A.D. 1964.

S. H. Livesay

F. J. Obara, Jr.

A. D. Grier